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Letter dated 16 April 2002 from the Chargé d'affaires a.i. of the Permanent Mission of Denmark to the United Nations addressed to the Committee

Upon instructions from my Government, I have the honour to transmit to the Committee established by the Security Council pursuant to resolution 1267 (1999) the Danish report on resolution 1390 (2002) (see annex).

My Government stands ready to provide the Committee with further reports or information, as necessary or if requested to do so by the Committee.

I would be grateful if you would have the text of the present letter and its annex circulated as a document of the Security Council.

(*Signed*) Ruben **Madsen**
Ambassador
Chargé d'affaires a.i.

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Annex to the letter dated 16 April 2002 from the Chargé d'affaires a.i. of the Permanent Mission of Denmark to the United Nations addressed to the Committee

Report submitted by Denmark pursuant to paragraph 6 of Security Council resolution 1390 (2002) of 16 January 2002

Introduction

In Security Council Resolution 1390 (2002) adopted 16 January 2002 the Security Council called upon all States to report to the Committee established by the Council pursuant to resolution 1267 (1999) - no later than 90 days from the date of the adoption of the resolution.

The following report covers actions undertaken by the Danish Government as well as actions taken within the framework of the European Union.

Operative Paragraph 2

Sub-paragraph (a) - Freezing of funds and other financial assets or economic resources of these individuals, groups, undertakings and entities, including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensuring that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly for such persons' benefit, by their nationals or ny any persons within their territory

In order to implement UNSCR 1267 (1999) and UNSCR 1333 (2000), on 6 March 2001 the European Union adopted a Regulation (EC Council Regulation 467 2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan). The Regulation provides for the freezing of all funds and other financial resources belonging to any natural or legal person, entity or body designated by the Sanctions Committee (established pursuant to UNSCR 1267 (1999)) and listed in one of the annexes to the Regulation. As provided for under the terms of the Regulation, the European Commission has amended the list annexed to the Regulation on the basis of decisions made either by the Security Council or its Sanctions Committee, adding new persons and entities to the list. Some of these amendments target Osama bin Laden and the Al-Qaida network.

According to EU Regulation 467/2001, the financial institutions in Denmark have been requested to inform the competent authority if any of the persons and entities listed in the annexes to the regulations are known to the financial institutions in order to freeze funds, assets and resources. The financial institutions have replied that they at present have not identified any of the persons and entities targeted and therefore no accounts have been frozen.

In order to implement UNSCR 1390, The European Union will soon adopt a common position and a Regulation, which will provide for the freezing of funds and other financial assets or economic resources of individuals, groups, undertakings and entities referred to in the list created pursuant to resolutions 1267 (1999), 1333 (2000) and 1390 (2002).

Sub-paragraph (b) – Preventing the entry into or the transit through their territories of these individuals, provided that nothing in this paragraph shall oblige any State to deny entry into or require the departure from its territories of its own nationals and this paragraph shall not apply where entry or transit is necessary for the fulfilment of a judicial process or the Committee determines on a case by case basis only that entry or transit is justified

Denial of residence permits to aliens because of serious offences committed in Denmark

Legislation in place

The Danish Aliens Act contains a number of provisions securing that terrorists are denied safe haven in Denmark.

According to the Danish Aliens Act article 10 aliens who are convicted for offences committed outside of Denmark may be denied residence permit. Furthermore – if the offence has resulted in a court judgement, court order or decision ordering the alien to be expelled – offences committed in Denmark may lead to denial of residence permit. The said offences include offences involving terrorism.

The general system in the Aliens Act regarding expulsion by judgement (section 22(i)-(iii), section 23 and section 24) can be described as follows:

(a) An alien who has been lawfully staying in Denmark for seven years or more can be expelled if he or she is sentenced to a minimum of four years' imprisonment. If the alien has been sentenced in respect of several counts, or if the alien has previously been sentenced to imprisonment in Denmark, the alien can be expelled if he or she is sentenced to imprisonment for at least two years;

(b) An alien who has been lawfully staying in Denmark for three years or more, but less than seven years, can be expelled if he or she is sentenced to a minimum of two years' imprisonment. If the alien has been sentenced in respect of several counts, or if the alien has previously been sentenced to imprisonment in Denmark, the alien can be expelled if he or she is sentenced to a minimum of one year's imprisonment.

(c) An alien with less than three years' lawful residence can be expelled if he or she is sentenced to a suspended or non-suspended custodial penalty

The conditions mentioned concerning the length of the term of imprisonment are minimum conditions in the sense that in all cases the courts must weigh the alien's personal circumstances and ties with Denmark against the seriousness of the crime (section 26). In this connection, such circumstances as the duration of the alien's stay in the country, the alien's health and the consequences of the expulsion for the alien's close relatives living in Denmark are considered

Concerning recognised refugees a decision on expulsion can only be enforced in accordance with the conditions applying to aliens with a lawful residence of seven years or more, or if the recognised refugee is sentenced in respect of a form of crime falling within the extended provision for expulsion (see below)

Enforcement of the decision of expulsion in the form of return cannot be carried out if the alien is thereby returned to a country where the alien risks persecution as described in the Convention relating to the Status of Refugees (see in this respect section 31 of the Aliens Act).

In 1996 an amendment of the Aliens Act was made, whereby a provision was inserted in the Aliens Act allowing the courts to expel an alien who is sentenced to a custodial penalty because of a drug offence. In 1998 was inserted a number of other serious types of crime in the same extended provision for expulsion according to which, basically, expulsion may be enforced where the alien is sentenced to a custodial penalty regardless of the length of the alien's stay in Denmark. The crimes concerned include murder, rape, aggravated assault and battery, robbery, offences against property of a particularly aggravated nature, people-smuggling, violence against persons in public service, arson and hijacking of planes and ships

There was also inserted a provision in the Aliens Act, according to which expulsion can be enforced in such cases unless the humanitarian considerations mentioned in the Aliens Act, in particular the alien's personal circumstances and ties with Denmark, make expulsion decisively inappropriate

The provision means that said considerations can only exceptionally prevent expulsion. A person will not be expelled if expulsion results in a violation of obligations under international human rights law.

Furthermore, an alien may be expelled administratively when this is found to be necessary for considerations of national security (section 25 of the Aliens Act).

Legislation contemplated

In this field, the Danish Government has put forward in parliament a Bill whereby the following changes of the Aliens Act is proposed.

The Danish Government contemplates a tightening up of the provisions in the Aliens Act regarding denial of residence permit because of offences committed outside of Denmark or in Denmark. For instance, it should under no circumstances be possible to obtain residence permit – as a refugee or on other grounds – if the exclusion clauses in article 1 F of the 1951 Convention relating to the Status of Refugees apply or if an alien is considered as a danger to the society or is considered to be a danger to the security or health of the Danish population.

The provisions regarding expulsion by judgement will be changed in order to – regardless of the length of the alien's stay in Denmark – expel aliens who commit offences with a view to overthrow or subvert Danish society or democracy. Aliens who are a danger to the security or health of the Danish population are also affected by this change.

The provisions regarding administrative expulsion will be changed. The change means that aliens who are considered as a danger to the society as well as aliens who are considered to be a danger to the security or health of the Danish population can be administratively expelled.

Furthermore, the Danish prohibition of refoulment in the Aliens Act section 31 should be tightened in order to make it possible to enforce decisions of exclusion and expulsion in all cases – unless it would be contrary to Denmark's obligations under the 1951 Geneva Convention relating to the Status of Refugees or other international conventions.

Border controls, refusal of entry and issuance of visa

Legislation in place

After Denmark has entered the practical Schengen co-operation border control is only carried out at the external Schengen borders in Denmark. The control of the external borders is regulated in the Danish Aliens Act which has been amended to meet the requirements set in the Schengen acquis.

According to the Danish Aliens Act an alien not issued with a residence permit for Denmark may be refused entry if reasons of public order, relations with foreign powers or reasons of security or health of the Schengen countries indicate that the alien should not be allowed to stay in Denmark.

Such aliens may also be denied a visa for entry into or transit through Denmark.

Administrative steps taken

Following the terror acts on 11 September 2001, the control of the Danish borders has been carried out with a special awareness towards the fight against terrorism.

Legislation contemplated

The Danish Government contemplates to change the Aliens Act (see above) to the effect that more aliens – including aliens having committed terrorist acts – will be reported to the Schengen Information System as unwanted. The reporting to the Schengen Information System will improve possibilities for other members of the Schengen co-operation to identify such aliens in case they travel to a Schengen member state and are stopped by the police. Furthermore, aliens reported as unwanted in the Schengen Information System may be denied access to the Schengen area and will be denied a visa for entry into or transit through Denmark.

A number of new provisions are contemplated to be added into the Aliens Act in order to facilitate the possibilities for information exchange (regarding aliens having applied for residence permits or visas etc. in Denmark) between the immigration authorities, the intelligence services and the prosecution authority. The exchange of information should, among other things, ensure that aliens

posing a security risk *vis-à-vis* Denmark or countries with close ties to Denmark are identified in order to take appropriate precautions

Appropriate measures before granting refugee status

Legislation in place

The Danish immigration authorities are, during the process of determining whether a person qualifies for refugee status, examining whether the exclusion clauses in article 1 F (a)-(c) of the 1951 Convention relating to the Status of Refugees are applicable. If affirmative, refugee status will be denied. In this context, article 1 F (b) of the Convention, according to which the Convention shall not apply to any person with respect to whom there are serious reasons for considering that he has committed a serious non-political crime, is of particular relevance.

With regard to denial of residence permits to refugees – as well as other aliens – because of serious offences committed in Denmark see the comments above.

Legislation contemplated

See above under "Denial of residence permits to aliens because of serious offences committed in Denmark" – section on contemplated legislation.

Abuse of refugee status

Legislation in place

According to the Aliens Act, applications of asylum are in first instance examined by the Danish Immigration Service and – in case of a negative first instance decision – the Refugee Board.
In the process of examining whether an asylum seeker should be excluded from refugee status as a consequence of terrorist acts the Danish Immigration Service and the Refugee Board can employ all relevant information. For instance: Information from the applicant, all accessible background information on a particular country, information from the intelligence services, information from Interpol etc.

Administrative steps taken

After the terror acts on 11 September 2001, the Danish Immigration Service will carry out personal interviews in all cases – in order to examine the background of these aliens very closely and, where necessary, exchange information with the intelligence services.

Legislation contemplated

A number of new provisions are contemplated to be added into the Aliens Act in order to facilitate the possibilities for information exchange (regarding aliens having applied for residence permits or visas etc. in Denmark) between the immigration authorities, the intelligence services and the prosecution authority. The exchange of information should, among other things, ensure that aliens posing a security risk to Denmark or countries with close ties to Denmark are identified in order to take appropriate precautions.

The Danish Government also contemplates to improve the Police's possibilities – in the context of an investigation of an offence or international searches – to compare fingerprints with fingerprints taken from asylum seekers and to pass on fingerprints from asylum seekers to police authorities abroad.

Sub-paragraph (c) - Preventing direct and indirect supply, sale and transfer, to these individuals, groups, undertakings and entities from their territories or by their nationals outside their territories, or using their flags vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned and technical advice, assistance, or training related to military activities

According to Article 5 of Regulation 467/2001, it is prohibited to grant, sell, supply or transfer, directly or indirectly, technical advice, assistance or training related to the military activities of armed personnel under the control of the Taliban, to any natural legal person or any entity or body in Taliban-controlled Afghanistan, or to any person, entity or body for the purpose of any business

carried on in, or operated from Taliban-controlled Afghanistan. As explained under Operative Paragraph 2, sub-paragraph (a), the European Union expects to adopt a Common Position and a Regulation soon, which will repeal Regulation 467/2001 and implement UNSCR 1390 (2002).

At present, the ban on export of weapons and related material in Article 2 (c) of UNSCR 1390 (2002) is implemented through national legislation. According to the Order on the Weapons and Explosive Acts § 6, it is prohibited to export the following items without a licence or authorisation from the Minister of Justice or the person appointed by the minister for that purpose:

1) Weapons of any kind with the exception of hunting weapons.
2) Ammunition, with the exception of ammunition for hunting purposes.
3) Equipment for land, sea or air warfare.
4) Machinery, instruments, apparatus and other means of production used primarily for the manufacture or maintenance of weapons, ammunition or munitions, and parts and accessories for such means of production.
5) Explosives covered by the ban in § 1, Subsection 2.

Thus, export of weapons and other military products and technology is subject to a general prohibition, which can be lifted by a licence issued by the Minister of Justice or a person appointed by the minister for that purpose. A licence requires sufficient documentation ensuring that the receiving State does not have any objections to importing the weapons in question.

In accordance to UNSCR 1390, no licences are issued to any of the individuals, groups, undertakings and entities referred to in the list created pursuant to resolution 1267 (1999), 1333 (2000) and 1390 (2002), which is updated regularly by the Committee established pursuant to 1267(1999).

Export control on dual-use products

In the field of export control on dual-use products, Denmark has strengthened its efforts in the export control area on the following points:

- Denmark supports every initiative to include combat of terrorism into the objectives of the export control regimes (Wassenaar Arrangement, MTCR, NSG and Australia Group)
- With regard to licensing dual-use items for exports, more in depth scrutiny is now being exercised by the authorities in order to avoid that sensitive goods fall into the hands of terrorists or terror organisations
- In the area of legislation a bill has been submitted to Parliament proposing that the present limit for imprisonment of 2 years should be increased to 6 years in serious cases of infringement of the export control legislation

Operative Paragraph 8 – Steps to enforce and strengthen through legislative enactments or administrative measures the measures imposed under domestic laws or regulations to prevent and punish violations of the measures referred to in paragraph 2 - and results of all related investigations or enforcement actions.

Contemplated legislation

On 13 December 2001 the Danish Government presented a legislative package (four Bills) to the Danish Parliament containing a broad range of initiatives aimed at combating terrorism and the financing of terrorism – including all the legislative amendments, which are necessary to comply with international standards and requirements after the events of 11 September. The bill contains a new separate provision on terrorism, which – unlike the present section 114 of the Danish Criminal Code – is not limited to terrorist organisations which are based in Denmark or otherwise linked to Denmark or Danish interests. The proposed provision carries a penalty of up to life imprisonment. The bill also contains separate provisions on the financing of terrorism, which carry a penalty of imprisonment up to 10 years. The bill contains all the amendments necessitated by the International Convention for the Suppression of the Financing of Terrorism and the UN Security Council Resolution 1373 (2001).

The Danish Government will take steps to ensure that the bill will be implemented in Greenland and the Faroe Islands as soon as the bill has been adopted by the Parliament.

For more detailed information on the legislative package, please see the report submitted to the Counter Terrorism Committee pursuant to paragraph 6 of Security Council Resolution 1373 (2001) by Denmark

Investigations and enforcement actions

Regarding related investigations and enforcement actions, the Danish police investigates thoroughly all relevant information submitted to the police which might have relation to any of the individuals, groups, undertakings and entities referred to in the list created pursuant to resolution 1390 (2002)

So far these investigations have not resulted in any enforcement actions